

APR. 15. 2005 2:11PM

AVENTIS US PAT DEPT.

NO. 4432 P. 8/9

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VON: DSMZ PATENTS

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BIS: 0069357175

S.1/2

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**DSMZ**Deutsche Sammlung von  
Mikroorganismen und  
Zellkulturen GmbH

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Aventis Pharma Deutschland GmbH  
A company of the sanofi-aventis group  
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U.S.S.N.: 10/676,715 filed 10/1/03

Hopmann et al; File: DEAV2002/0066US NP  
EXHIBIT A

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Ihr Zeichen / Your ref.

Unser Zeichen / Our ref.  
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Tel.

0531/2816-

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Datum / Date

2005-04-07

www.dsmz.de

***Cryphonectria parasitica* DSM 14453**

Dear Dr. Sieber

The strain *Cryphonectria parasitica* DSM 14453 has been deposited at the DSMZ for the purposes of patenting according to the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure. The Treaty has been established by the World Intellectual Property Organization (WIPO), Geneva to meet the needs of patent applicants for biotechnological inventions. According to the Treaty certain culture collections are recognized by WIPO as International Depositary Authorities (IDAs). The DSMZ functions as patent depositary according to the Budapest Treaty since 1981 and holds more than 6000 patent strains. The main characteristics of an IDA as e.g. the DSMZ are (see Art.6, Status of International Depositary Authority):

....

(2) The depositary institution must, in its capacity of international depositary authority:

(iii) be impartial and objective;

(vii) comply, in respect of the deposited microorganisms, with the requirement of secrecy, as prescribed in the Regulations;

(viii) furnish samples of any deposited microorganism under the conditions and in conformity with the procedure prescribed in the Regulations.

Rule 9.2 of the Treaty specifies the demand for secrecy about biological material deposited according to the Budapest Treaty:

**Rule 9.2 Secrecy**

No international depositary authority shall give information to anyone whether a microorganism has been deposited with it under the Treaty. Furthermore, it shall not give any information to anyone concerning any microorganism deposited with it under the Treaty except to an authority, natural person or legal entity which is entitled to obtain a sample of the said microorganism under Rule 11 and subject to the same conditions as provided in that Rule.

Geschäftsführer:  
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Aufsichtsratsvorsitzender:  
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As the DSMZ in its function as IDA follows the regulations of the Budapest Treaty, strains deposited according to the Treaty are handled in a separate department, will not be published and will never be listed in any publicly available list or in the DSMZ on-line catalogue. Consequently, nobody – except the depositor/patent applicant himself and the patent office involved – knows about the existence of a patent strain deposited according to the Budapest Treaty unless the patent application has been disclosed. Budapest Treaty deposits consequently will not appear in the public domain of the DSMZ.

Furnishing of samples of deposited biological material follows Rule 11 of the Treaty:

*11.1 Furnishing of Samples to Interested Industrial Property Offices*

*Any international depositary authority shall furnish a sample of any deposited microorganism to the industrial property office of any Contracting State or of any intergovernmental industrial property organization, on the request of such office, provided that the request shall be accompanied by a declaration to the effect that:*

....

*11.2 Furnishing of Samples to or with the Authorization of the Depositor*

*Any international depositary authority shall furnish a sample of any deposited microorganism:*

*(i) to the depositor, on his request;*

*(ii) to any authority, natural person or legal entity (hereinafter referred to as "the authorized party"), on the request of such party, provided that the request is accompanied by a declaration of the depositor authorizing the requested furnishing of a sample.*

*11.3 Furnishing of Samples to Parties Legally Entitled*

*(a) Any international depositary authority shall furnish a sample of any deposited microorganism to any authority, natural person or legal entity (hereinafter referred to as "the certified party"), on the request of such party, provided that the request is made on a form whose contents are fixed by the Assembly and that on the said form the industrial property office certifies:*

*(i) that an application referring to the deposit of that microorganism has been filed with that office for the grant of a patent and that the subject matter of that application involves the said microorganism or the use thereof;*

*(ii) that, except where the second phrase of (iv) applies, publication for the purposes of patent procedure has been effected by that office;*

....

It is evident that third parties will request Budapest Treaty deposits only after a patent application has been disclosed or patent protection has been granted. Without reference to a patent/application their requests cannot be handled at the IDA.

Sincerely yours,

*V. Weihs*

Dr. Vera Weihs

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